

 **Lampert & O'Connor, P.C.**
1750 K Street NW
Suite 600
Washington, DC 20006

EX PARTE PRESENTATION FILED

Linda L. Kent
kent@l-olaw.com

Tel 202/887-6230
Fax 202/887-6231

Via Hand Delivery

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October 11, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Re: Oral Ex Parte Presentation
CC Docket No. 96-45

Dear Ms. Dortch:

On October 10, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOLTW") and Donna N. Lampert and the undersigned both of this office, met with Matthew Brill of Commissioner Abernathy's office and, in a separate meeting, with Christopher Libertelli of Chairman Powell's office.

Consistent with its Reply Comments filed July 9, 2001, AOLTW discussed three major points regarding the above-referenced proceeding relating to the universal service fund contribution methodology and recovery mechanism in both meetings. First, AOLTW stated that regardless of the specific contribution methodology ultimately selected, the pass-through of telecommunications carrier universal service costs must be reasonable and nondiscriminatory. AOLTW explained that *information* service providers ("ISPs") contribute to universal service through payment of carrier-assessed pass-throughs. The flexibility allowed by the Commission on how pass through amounts are determined and assessed has meant that often customers are unable to discern whether the amounts are reasonable. AOLTW urged the Commission to ensure that pass-through amounts are reasonable and nondiscriminatory by limiting the charges to the Commission-mandated carrier contribution amount, by requiring carriers to provide advance notice of pass-through increases and by requiring that the pass through charge be uniform for all customers, including affiliates, to prevent discriminatory application. If the Commission

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determined that a mark-up be allowed for administrative costs, AOLTW recommended that it be limited to a fixed, safe harbor percentage and that carriers be required to demonstrate that the mark-up recovers only costs directly related to universal service.

Second, AOLTW urged the Commission to reject any contribution methodology that would require ISPs to contribute directly to universal service. Section 254(d) of the Telecommunications Act clearly *limits* contributors to all providers of interstate telecommunications service or any other providers of interstate telecommunications. It is well settled, both as a matter of law and policy, that ISPs are not carriers and do not provide telecommunications. AOLTW stated that the current BellSouth/SBC contribution proposal must be rejected because it illegally shifts universal service contribution obligations from telecommunications and telecommunications service providers to information service providers through a system of multiple connection assessments. AOLTW noted that the proposal is administratively unworkable and would inhibit broadband deployment by requiring higher assessments for higher bandwidth. Likewise, the provision in the Verizon proposal that illegally requires ISPs to contribute to the schools and libraries program must be eliminated from that proposal.

Finally, AOLTW urged the Commission to ensure that the contribution methodology ultimately selected does not negatively impact Internet growth or inhibit broadband deployment. With regard to the proposed connection-based methodologies, AOLTW explained that "connection" must be defined so that Internet usage involves only two connections: the telephone line connection the consumer to the public switched telephone network ("PSTN") and the specific access facility connecting the ISP to the PSTN. Counting intermediate facilities or telecom inputs, such as modem ports, modem aggregation services or DSL services, as separate connections would negatively impact broadband deployment by amassing disproportionate and inappropriate universal service charges on Internet usage. In addition, AOLTW cautioned the Commission that the impact of the connection-based methodologies was, at best, unclear, but could be disruptive particularly if a "freeze" on residential and single line business charges is adopted. AOLTW stressed the need for an appropriate transition period to avoid customer rate shock.

AOLTW also stated that, under the proposed revenue-based methodology, the Commission need not address the statutory classification of DSL transmission services. That issue as well as the impact of cable modem services is beyond the scope of this proceeding and the record in *this* proceeding does *not support altering the current classifications*. AOLTW recommended that the current classification of DSL services as telecommunications services be maintained for universal service contribution purposes until the classification issue has been resolved in CC Dockets 01-338 and 02-33 where an adequate record has been developed. At that time, the Commission could forgo universal service contribution obligations if it determined that it had the legal and policy basis to do so. In any case, AOLTW pointed out that the data

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currently on the record shows that DSL contributions will not significantly impact the contribution factor levels. AOLTW also noted that even if adopted on an interim basis, reform **of** the revenue-based methodology, including moving to a collect and remit system and reassessing the wireless safe harbor, could address the immediate problem of declining interstate revenues consistent with statutory requirements.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, two copies of this Notice are being provided to you for inclusion in the public record in this proceeding. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

cc: Matthew Brill
Christopher Libertelli